



United States Mission to the OSCE

Remarks on Preventing Torture in the War Against Terrorism

As delivered by Robert Harris,
U.S. State Department, Office of the Legal Advisor
to the Supplemental Human Dimension Meeting, Vienna
July 15, 2005

Thank you Mr. Moderator.

This is a very useful discussion on a tremendously important topic. There is more in common in the various views around this table than the conversation might suggest. All countries that consider themselves to be civilized must oppose torture. No one believes that cruel and degrading treatment is a good thing. This is something we all have in common.

That said, I need to respond to criticisms that have been raised here, suggesting that the United States is not committed to the rule of law. This is not correct.

In the interest of time, and to permit this discussion to focus on issues involving all 55 participating States of the OSCE, rather than just one country, I will not attempt to address every criticism that has been raised against the United States.

As a preliminary matter, it is not correct to say that the United States has abandoned the rule of law in its response to the armed attacks against it by Al Qaeda and its affiliates. On the contrary, the United States is profoundly committed to the rule of law and to abide by its national laws and the commitments it has assumed under international law. This is particularly true with respect to obligations we have assumed with regard to torture.

To some extent, criticism that the United States has abandoned the rule of law reflect disagreement about what the relevant law may be in certain situations. In some other instances, particularly with respect to well-known abuse of detainees – most notably abuses of prisoners at Abu Ghraib – it may reflect the commission of what the United States fully agrees are unlawful and reprehensible acts, acts for which the perpetrators are being and shall be held accountable in accordance with law.

It is easy for legal discussions about the U.S. war against Al Qaeda and its affiliates to become confused by failure to recognize that the United States is engaged in a literal – not rhetorical – war against Al Qaeda and its affiliates. In 1996, Osama bin Laden issued a fatwa declaring war against the United States. In the following years, Al Qaeda attacked the U.S. embassies in Kenya and Tanzania, as well as military targets, killing more than 200 people. The horrific

events of September 11 are well known, resulting in the death of over 3,000 people from 98 nations.

After these attacks against innocent civilians, the World Trade Center and the Pentagon, the international community acted decisively to affirm that the United States was fully within its legal rights to respond under the law of war to an armed attack against it. This was decided by the UN Security Council, by all 19 NATO member countries, by the members of the Organization of American States under the Rio Treaty, and by Australia, citing the ANZUS Treaty.

In October 2001, exercising its right of self-defense, the U.S. government began formal military action against terrorists and the Taliban harboring them in Afghanistan. By any measure, this was an armed conflict. The detainees at Guantanamo are combatants in the war against Al Qaeda and the Taliban. Under the international law of war, the United States has the right to hold combatants for the duration of hostilities. This has long been recognized as necessary to prevent combatants from rejoining the fight.

In conducting this war, the United States has never waived from its categorical and longstanding opposition to and prohibition of torture. Torture is *never* acceptable in wartime or in peacetime.

Under U.S. law, any U.S. citizen engaging in torture anywhere in the world – indeed any torturer found in the United States – is subject to criminal prosecution. This includes contractors of the United States Government.

At the highest levels of government, torture has been condemned as an affront to human dignity and the rule of law. Under U.S. law, as reflected in Article 15 of the Convention Against Torture, the information elicited by torture is not admissible in criminal proceedings and, as recently confirmed by the U.S. Attorney General, has not been relied upon for any purpose.

Consistent with Article 3 of the Convention Against Torture, the United States does not transfer people to countries where it believes it is more likely than not that the person will be tortured. This policy applies to all components of the U.S. Government.

The United States is not only committed to oppose torture and prosecute torturers, the United States is also committed to the obligations it has assumed to prevent cruel, inhuman or degrading treatment or punishment. Returning to the question of detainees, the U.S. armed forces are committed to treat all detainees humanely and not subject them to physical or mental abuse or cruel treatment.

Realizing that I have already spoken too long, I would note that in May of this year, in keeping with its commitment to the rule of law, the United States issued a lengthy report to the Committee Against Torture on its implementation of the Convention Against Torture. There is a lengthy description of U.S. detainee operations in an annex to that report.

Finally, I would note that our commitment to the rule of law cannot ensure that people in custody will never be abused. No country is perfect, and the discussion should recognize this unfortunate fact. However, states that believe in rule of law can and must ensure that perpetrators of abuse are brought to justice. Pictures at Abu Ghraib reflect truly reprehensible acts. Abuse of prisoners has also occurred in Afghanistan and Guantanamo. These acts are reprehensible. Pursuant to the operation of law in the United States, people who have engaged in such abuse are being, and will be, held accountable.

Thank you, Mr. Moderator.